



CHAPTER 90: CRITICAL AREAS UPDATE OCTOBER 24, 2016

PLANNING COMMISSION AND HOUGHTON COMMUNITY COUNCIL
CONTINUATION OF JOINT HEARING





AGENDA

1. Staff Presentation
2. Questions and Discussion by the Planning Commission and Houghton Community Council
3. Houghton Community Council deliberates and makes recommendation to Planning Commission
4. Planning Commission deliberates and makes recommendation to City Council



STAFF PRESENTATION

1. Response to Comment from both the Planning Commission and Houghton Community Council
2. Response to Comments from the Planning Commission
3. Response to Comments from Houghton Community Council
4. Response to Comments from Brent Carson
5. Changes on Staff Recommendation After Memo
6. Response to Comment from Greg Rairdon
7. Response to Comments from Tyler Litzenberger
8. Next Steps

RESPONSE TO COMMENT FROM PLANNING COMMISSION AND HOUGHTON COMMUNITY COUNCIL

□ **Effective Date of Ordinance**

- **March 1, 2017** would be 77 days after adoption.
- Applicants will have had **14 months** to submit applications since mailed and emailed notices were sent out.
- State deadline was **June 30, 2016** to complete update (which included a 12-month extension for all jurisdictions already given by the State).
- State grants contingent upon adoption of Chapter 90.

RESPONSE TO COMMENTS FROM PLANNING COMMISSION

- ✓ Done: Rephrase KZC 90.55.1 and KZC 90.65.1 for **restoration** of critical areas and KZC 90.130.4 for **size** of new footprint that requires 1:1 ratio of mitigation (from Mike Miller) (pages 31 of packet).
- Further discussion on **lapse of approval** for Reasonable Use Exception (page 66 of packet).
 - One Commission thought that 5-year lapse of approval was reasonable to match other zoning permits and length of time a critical area report is valid.
 - One Commissioners thought 2-year lapse of approval is appropriate due to the critical area nature of the sites.

RESPONSE TO COMMENTS FROM HOUGHTON COMMUNITY COUNCIL

- ✓ Done: Under Purpose section, addressed **private property rights** (page 14 of packet).
- ✓ Done: **Exempted** repair, maintenance and installation of private utilities per KZC 90.35.3 (page 18 of packet).
- ✓ Done: Define the word “**degraded**” for restoration requirement of critical area per KZC 90.55 and 90.60 (pages 28 & 31 of packet).
 - Look at vegetation, habitat, water quality and hydrologic functions on a case by case basis to determine if restoration is needed.

RESPONSE TO COMMENTS FROM HOUGHTON COMMUNITY COUNCIL

- No Change: Do not allow **foundation** of structure in buffer **to be replaced** per KZC 90.185.4 in exact same location for casualty damage or other reasons (page 68 of packet).
 - Replacement of foundation is significant action. Only opportunity to reduce degree of nonconformance when structure is in buffer and it will be completely replaced.
 - Foundation may be able to be moved partially or completely out of buffer depending on configuration of lot, existing improvements and required yard setbacks, or maybe not.
 - Approach is much more lenient than current code which does not allow reconstruction of structure when damage is greater than 50%.

RESPONSE TO COMMENTS FROM HOUGHTON COMMUNITY COUNCIL

- ✓ Done: Clarify that all **three options to add new footprints** to nonconforming structure is permitted per KZC 90.185.6 (page 69 of packet).
- ✓ Done: Require that buffer waiver for daylighted and meandered stream be **recorded on adjacent properties** if applicable per KZC 90.80.2.
 - But property owner must agree to the recording on their property title (page 36 of packet).

RESPONSE TO COMMENTS FROM BRENT CARSON

Provide private development the same allowances as the public sector:

- ✓ Changed: Allow maintenance and repair of **private street** under general maintenance and repair exemption section KZC 90.35.1 (page 18 of packet).
- ✓ Changed: Allow **private trails** to be maintained and repaired as an exemption under KZC 90.35.5 – word “public” in that section has been deleted in next version (page 19 of packet).
- No change needed: **Private trails** are already allowed to be **constructed and improved** as permitted activity under KZC 90.40.6.c (page 22 of packet).

RESPONSE TO COMMENTS FROM BRENT CARSON

Provide private development the same allowances as the public sector:

- No change needed: **Exceptions for private vs. public sectors** (pages 25 and 62 of packet).
 - Both have wetland and stream modification options.
 - Private sector has Reasonable Use Exception. Not applicable to public sector due to nature of projects.
 - Public sector has Public Agency Exception. Not applicable to private sector due to nature of projects.

- No change needed: Private utilities are already able to be **constructed and improved** the same as public utilities under KZC 90.40.6.d. (page 23 of packet).

RESPONSE TO COMMENTS FROM BRENT CARSON

Buffer modifications should be allowed and “paper fill” of wetlands should be implicitly allowed (pages 28 and 29 of packet)

- ❑ Policy direction is for **narrower buffers with fully vegetative buffers**. This approach does not allow for buffer reductions other than as part of wetland modification.
- ❑ Ecology does not support the concept of “**paper fill**” of **wetlands**, but recognizes that jurisdictions do permit them. Kirkland has in the past. Nothing in new code would preclude them.
- ✓ Changed: Staff agrees on one limited buffer modification - **vehicular access through a buffer** when it is the only option for getting to buildable site (page 22 of packet).
 - Only one point of impact into buffer compared to buffer reduction of entire buffer.

RESPONSE TO COMMENTS FROM BRENT CARSON

- ✓ Changed: **Interrupted Buffer Waiver** KZC 90.120 so that an applicant can apply for a waiver for any structure.
 - Did exclude minor improvements like decks and patios that could clearly not meet the criteria (page 46 of packet).

RESPONSE TO COMMENTS FROM BRENT CARSON

- No Change: Only 4-foot high **retaining walls** should be allowed within 10-foot structure setback per KZC 90.140 (page 49 of packet).
 - Mr. Carson requests a 20-foot high retaining wall which is the height of a building and buildings are not allowed in the structure setback
 - Improvements allowed in this setback are only low level or narrow in size.

- ✓ No change: **Preference** should be for **on-site or in-city off-site wetland mitigation** before off-site in the watershed area per KZC 90.145 (page 51 of packet).
 - This reflects Ecology's model ordinance and guidance.
 - Retaining wetlands in city provides flood storage, water quality filtration and wildlife habitat.
 - Still can propose off-site in watershed area if four criteria are met in KZC 90.145.3.b.

RESPONSE TO COMMENTS FROM BRENT CARSON

- ❑ What is point of **alternative buffer** (33% larger than narrow buffer and no vegetation is required)? KZC 90.55 and KZC 90.60 (pages 16 and 19 of packet).
 - No installation of buffer vegetation required along with no monitoring, maintenance and security device.
 - Gives another option to property owners with large lots.

RESPONSE TO COMMENTS FROM BRENT CARSON

- ✓ Change: Added new section to Non-conformances KZC 90.185.1 with **list of what property owners can and cannot do** (page 67 of packet).
 - Can still mow legal lawn but cannot expand it.
 - Nonconforming structures can be repaired and maintained but not expanded, except as allowed under KZC 90.185. This includes play equipment or similar improvements.
 - Reference to Vegetative Buffer standards and when that is triggered.
- How to **prove that on-site mitigation would not be successful** so that off-site in watershed can be done? (page 51 of packet)
 - Through critical area report to address four criteria for allowing off-site mitigation per KZC 90.145.3.b (page 51 of packet).

CHANGES IN STAFF RECOMMENDATION SINCE MEMO

- ❑ Added provision that **Planning Official decision will bump up** to Process IIA or IIB like Process I permit if project is required to have one of these permits (recommended by City Attorney's office for one open record hearing requirement) (KZC 90.30: page 6 of packet)
- ❑ Clarification for exemption of **private roadway into buffer** for vehicular access (KZC 90.40: page 10 of packet)
 - This provision is not applicable for Reasonable Use, Wetland or Stream Modifications
- ❑ Added to list of **submittal requirements** for Public Agency Exception (KZC 90.45: page 25 if packet)

CHANGES IN STAFF RECOMMENDATION SINCE MEMO

- ❑ **Buffer fencing for non-conformances** when footprint is added (KZC 90.6.a.11: page 70 of packet)
 - Listed what fencing is required rather than leave it to the discretion of the Planning Official (response to K.Wallstrom)
 - Fencing is not required in existing areas with legal lawns or other improvement

- ❑ Changed **vesting section** for prior approval at initial construction to valid lapse of approval (KZC 90.200: page 73 of packet)
 - City Attorney office recommended change to be consistent with vesting law

CHANGES TO STAFF RECOMMENDATION SINCE MEMO

- ❑ Go back to Planning Commission's original policy on **removal of nonconforming structures in buffer** with development of the site and required vegetative buffer (KZC 90.130: page 47 and 48)
 - Looked at numerous sites that could redevelopment or are proposed to redevelop and determined that change in provision to respond to Mr. Carson will result in **no buffer** on the sites
 - Keep threshold of 1,000 square foot new net impervious
 - Add threshold of new or replacement structure that **exceeds 50% of the replacement cost of all improvements** on site instead of 1,000 square foot addition. Single family non-conformances exempt from this threshold.

RESPONSE TO GREG RAIRDON COMMENTS

- ❑ Greg Rairdon is concerned about the **width of the new buffers** (KZC 90.60 pages 15-16 of packet).
 - Buffers will generally go from 50-100 feet to 40-165 (8-9 habitat score wetland have a buffer of 225 feet but we probably do not have buffers that meet this score and no bogs or high conservation areas with buffers of 190 feet in the city).
 - City must update its buffers to be consistent with the Growth Management Act and Best Available Science.

RESPONSE TO LITZENBERGER COMMENTS

Existing Code



- Existing grandfathered
- Maintenance & repair allowed
- No replacement or reconstruction
- No 2nd story in buffer
- No expansion of nonconformance
- No setback modifications
- No replacement if +50% casualty

New Draft Code



- Existing grandfathered
- Maintenance & repair allowed
- Reconstruction
- Add 2nd story
- Expand 500 sf in buffer (outside 60% limit)
- No limit on expansion outside buffer
- Front yards reduced from 20' to 10' (garage maintain 18.5')
- Side & rear yards reduced to 5'
- Full replacement is casualty damage (options if foundation replaced)



NEXT STEPS

- November 15, 2016: City Council study session
- December 13, 2016: City Council adoption
- January 23, 2017: Houghton Community Council final action
- March 1, 2017: potential date ordinance goes into effect

QUESTIONS AND DISCUSSION AND THEN DELIBERATION

- ❑ Questions and Discussion by the Planning Commission and Houghton Community Council
- ❑ Houghton Community Council deliberates and makes recommendation to Planning Commission
- ❑ Planning Commission deliberates and makes recommendation to City Council